

**Notice of Allowability**

Application No.

10/821,036

Examiner

Beverly M. Flanagan

Applicant(s)

MARTONE ET AL.

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Filing - 4/7/04.
2. ☒ The allowed claim(s) is/are 1-67 and 112-138.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 4/7/04 & 7/28/04 ; 12/19/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
BEVERLY M. FLANAGAN  
PRIMARY EXAMINER

### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: The prior art does not teach or fairly suggest the invention was recited in claims 1-67 and 112-168 of the instant invention which recite, *inter alia*, a sheath assembly for use with an endoscope, the assembly comprising a body portion adapted to encapsulate the insertion tube of the endoscope and a working channel attached to the body portion where the working channel has a cut or gap disposed therein, the cut or gap being at least partially transverse to a longitudinal axis of the working channel and the working channel being separable along at least a portion of the cut or gap when the working channel is subjected to an axial tension force.

The most relevant reference, Christopher, U.S. Patent No. 6,585,642, does not qualify as prior art because the filing date of Christopher is later than the filing date of the instant application. It should be further noted the Christopher is a continuation-in-part of an earlier filed application, but upon inspection by the examiner, the parent application does not contain the relevant subject matter, i.e., notches in the working channel of a sheath. Accordingly, the notches are part of the continuation-in-part subject matter and are only entitled to the filing date of the continuation-in-part application, which is later than the filing date of the instant application.

Other relevant prior art references are Frassica et al., U.S. Patent No. 5,483,951 and Silverstein et al., U.S. Patent No. 5,025,778 disclose a working channel in a sheath where the working channel is provided with an embedded spring or spiral to enhance

Art Unit: 3739

and enable bending of the working channel (see Figure 8 of Frassica et al. and Figure 12 of Silverstein et al. However, the springs or spirals taught by these references do not constitute cuts or gaps. Emerson, U.S. Patent No. 4,353,358, discloses an endoscope provided with cutouts 30 at the distal end to enable bending (see Figures 1-3). However, the teachings of Emerson are not applicable to either the Frassica et al. or Silverstein et al. references as there would be no motivation to combine the references because both references already teach enhanced bending via the springs or spirals and because the cutouts 30 of Emerson function by pulling a cord 32, not by axial tension, as recited in the claims of the instant invention. Accordingly, claims 1-67 and 112-168 are allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone

Art Unit: 3739

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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